

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CLIFFORD TUTTLE, et. al.

Consolidated with

JOHN NICHOLAS, et.al.

Plaintiffs,  
v.

CITY OF HOUSTON; ART ACEVEDO, et. al.  
Defendants.

Case No. 4:21-cv-00270

(JURY DEMANDED)

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**PLAINTIFFS' SUPPLEMENTAL MOTION TO UNSEAL SUMMARY JUDGMENT  
FILINGS AND EVIDENCE AS TO DEFENDANT GALLEGOS DUE TO WAIVER**

The Nicholas Plaintiffs file this Supplement to their Motion to Unseal Summary Judgment Responses and Exhibits [ECF No. 361], specifically as to Defendant Felipe Gallegos Due to Waiver.

As Plaintiffs outlined in their Motion to Unseal [ECF No. 361], consistent with the Constitution's abhorrence for secret trials, as well as applicable Supreme Court and Fifth Circuit mandates, there are compelling reasons for finally unsealing the briefings and evidence in this case more than six years after an unarmed citizen, Rhogena Nicholas, and her husband, Dennis Tuttle, were shot down in their own home. Defendant Felipe Gallegos in particular has repeatedly and publicly claimed to be a "hero" for his conduct before and after the assault on the innocent residents of the Harding Street home, while taking full advantage of the Court's sealing of every bit of physical, video, testimonial, and forensic evidence potentially exploding his self-promotion.

In open court, Gallegos's counsel has enthusiastically argued: "We did not join in the motion to seal, and we don't join it. From the very beginning[,] we have wanted his [Gallegos's] story and these guys that did have nothing to do with the affidavit, and were totally unaware of it,

all we've wanted is a public either a nonsuit in this case or his [Gallegos's] story to be out." Ex. A at 9:15-21 (October 29, 2024 Status Conference Hearing Transcript). Indeed, in that same open court hearing, Gallegos's counsel proclaimed that Gallegos is "the guy that saved everybody's lives" and "I believe this deserves to be a public trial." *Id.* at 10:13, 11:9-10.

Despite outward endorsements of open proceedings, Defendant Gallegos's deliberate strategy of requiring concealment of the actual evidence in this case does not line up with those words to the Court in public proceedings. For example, on August 9, 2024, Defendant Gallegos filed his motion to file summary judgment and exhibits under seal [ECF No. 315], in which he insisted this Court maintain under seal the briefing and evidence for Gallegos's motion for summary judgment. More recently, Defendant Gallegos's counsel confirmed at the April 15, 2025, hearing that Defendant Gallegos demanded, along with the other defendants, that all the evidence remain concealed from public view. See, p. 20: 9-16 (April 15, 2025 Hearing Transcript).

Defendant Gallegos' in-court statements waive any demand, no matter how unfounded at this time, to keep this evidence concealed from public view forever. *See N. Am. Specialty Ins. Co. v. Debis Fin. Servs.*, 513 F.3d 466, 470 (5th Cir. 2007) ("Waiver is generally understood to be the intentional relinquishment of a known existing legal right.").

Plaintiffs request that the Court instead fulfill Gallegos's wish expressed at the October 29, 2024, hearing that the summary judgment briefing and evidence on his motion for summary judgment be unsealed for public view. Consistent with his public waiver, Gallegos neglected to file an opposition to Plaintiffs' Opposed Motion to Unseal Summary Judgment Briefing [ECF No. 361], which the Court may also note in its ruling on the Motion as to Gallegos in particular.

Accordingly, the Court should order without further delay that the briefing and evidence regarding Gallegos's motion for summary judgment should be unsealed. This includes Gallegos's

sealed motion for summary judgment [ECF No. 318], Plaintiffs' sealed response in opposition to Gallegos's motion for summary judgment [ECF No. 334], Gallegos's sealed reply in support of summary judgment [ECF No. 353], and Plaintiffs' sealed response and objection to Gallegos's declaration in support of summary judgment [ECF No. 359], along with the sealed exhibits cited and filed with this briefing.

Dated: April 25, 2025

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#### **CERTIFICATE OF SERVICE**

I, the undersigned attorney, do hereby certify that a true and correct copy of the foregoing document was forwarded to the following counsel of record on this April 25, 2025 via CM/ECF, hand delivery, electronic mail, overnight courier, U.S. Mail, certified mail, return receipt request, or facsimile, pursuant to the Federal Rules of Civil Procedure.

/s/ Michael Patrick Doyle  
Michael Patrick Doyle